

ST 05-19

Tax Type: Sales Tax

Issue: Unreported/Underreported Receipts (Non-Fraudulent)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

**ABC, INC.,
Taxpayer**

**No. 03-ST-0000
IBT #: 0000-0000
NTL # 00 00000000000000
NTL # 00 00000000000000
Tax pds. 4/99-1/02**

**Charles E. McClellan
Administrative Law Judge**

RECOMMENDATION FOR DECISION

Appearances: George Foster, Special Assistant Attorney General, for the Illinois Department of Revenue (the "Department"); Eric G. Patt of Robbins, Salomon & Patt, Ltd. for ABC, Inc. ("Taxpayer").

Synopsis:

This matter arose from a protest filed to Notices of Tax Liability issued to Taxpayer by the Department for the periods beginning with April 1999 through January 2002. The Department based its Notices of Tax Liability on its determination of under-reported taxable sales and tax due on items purchased during the audit periods using its judgment and the best information available. An evidentiary hearing was held on June 29, 2005.

I recommend that the Notices of Tax Liability be made final.

Findings of Fact:

1. The Department issued Notice of Tax Liability # 00 000000000000, for the periods April 1999 through November 2000, on March 21, 2003 and Notice of Tax Liability # 00 000000000000, for the periods December 2000 through January 2002, on March 18, 2003. Dept. Ex. No. 1.
2. Taxpayer, a Corporation, was in the business of selling furniture at retail. *Id.*

Conclusions of Law:

The admission into evidence of the records of the Department under the certification of the Director at a hearing before the Department or any legal proceeding establishes the Department's *prima facie* case. 35 ILCS 120/4¹, 120/8; *Copilevitz v. Department of Revenue*, 41 Ill. 2d 154, 242 N.E.2d 205 (1968); *Central Furniture Mart v. Johnson*, 157 Ill. App. 3d 907, 510 N.E.2d 937 (1st Dist. 1987).

In this case, when the Department's Notices of Tax Liability (Dept. Ex. No. 1) were entered into the record under the certificate of the Director its *prima facie* case was established, and the burden shifted to the taxpayer to overcome the Department's *prima facie* case. *Anderson v. Dept. of Finance*, 370 Ill. 225, 18 N.E.2d 206 (1938); *Masini v. Dept. of Revenue*, 60 Ill. App. 3d at 14, 376 N.E.2d 325. 35 ILCS 120/4

In order to overcome the presumption of validity attached to the Department's *prima facie* case, Taxpayer is required to introduce into the record competent evidence, identified with its books and records showing that the Department's records are incorrect. *Masini v. Dept. of Revenue*, 60 Ill. App. 3d at 15, 376 N.E.2d 324 (1st Dist.1978);

¹ Unless otherwise noted, all statutory references are to the Retailers' Occupation Tax Act (ROTA), 35 ILCS 120/1 *et seq.*, sometimes referred to as *sales tax*. or the Illinois Use Tax Act (UTA) 35 ILCS 105/1, *et seq.*, sometimes referred to as *use tax*.

Copilevitz v. Dept. of Revenue, 41 Ill. 2d 154, 242 N.E.2d 205 (1968); *Dupage Liquor Store, Inc. v. McKibbin* 383 Ill. 276, 48 N.E.2d 926 (1943); *Howard Worthington, Inc. v. Department of Revenue*, 96 Ill. App. 3d 1132, 421 N.E.2d 1030 (2nd Dist. 1981). A taxpayer's testimony alone will not overcome the Department's *prima facie* case. *Central Furniture Mart v. Johnson, supra*. To overcome the Department's *prima facie* case the taxpayer must present consistent and probable evidence identified with its books and records. *Id.*

In response to the request of Department's auditor for Taxpayer's books and records for the audit periods, Taxpayer provided a 1999 federal income tax return for the 1999-year, customer bills for three sample months, the last page of sales journals for the audit period and copies of sales tax returns for sample months. Taxpayer provided no general ledgers or financial statements in response to the auditor's request.

Taxpayer agreed to provide the Department's auditor with sales information for three sample months which the auditor used to calculate Taxpayer's taxable sales. Taxpayer did not provide the auditor with exemption certificates and shipping bills to support claimed exempt sales. Taxpayer did not supply the auditor with any information regarding capital asset additions, so the auditor assessed use tax on capital asset additions as reported on Taxpayer's 1999 federal income tax return.

The law is clear that if the Department has reason to believe that the amount of taxable sales reported by a taxpayer is incorrect, it can determine the amount of sales that should have been reported by using its best judgment and information. *Anderson v. Department of Finance*, 370 Ill. 225, 18 N.E.2d 206 (1938). That is what the Department

did in this case. It determined Taxpayer's liability based on the documents provided by Taxpayer using its best judgment and information available. That is all the law requires.

Taxpayer did not offer any present and probable evidence identified with its books and records to refute the Department's *prima facie* case. Taxpayer has failed to overcome the Department's *prima facie* case. Therefore, I recommend that the Notices of Tax Liability be made final.

Date: 8/30/2005

Charles E. McClellan
Administrative Law Judge